



16-31-03

AF/3763

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Cox et al.

Serial No.: 08/909,130

Examiner: Thompson, K.

Filed: August 11, 1997

Group Art Unit: 3763

For: PERFUSION BALLOON ANGIOPLASTY CATHETER

Docket No.: 1001.1138103

TRANSMITTAL SHEET

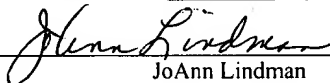
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Sir:

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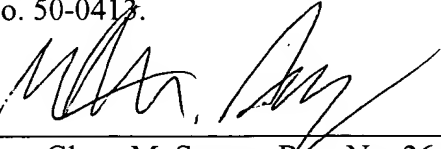
By


JoAnn Lindman

We are transmitting herewith the attached:

- ☒ Response After Final.
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By:


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T-A-
11-5-03

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#21/Koy
for
Lee
NE

In re Application of: Cox et al.

Serial No.: 08/909,130

Examiner: Thompson, K.

Filed: August 11, 1997

Group Art Unit: 3763

For: PERFUSION BALLOON ANGIOPLASTY CATHETER

Docket No.: 1001.1138103

RESPONSE AFTER FINAL

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<p>CERTIFICATE UNDER 37 C.F.R. 1.10: The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, "Express Mail Post Office to Addressee" having an Express Mail mailing label number of EV3156099431US in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Arlington, VA 22313-1450 on this <u>29th</u> day of <u>October</u>, 2003.</p> <p>By <u>JoAnn Lindman</u> JoAnn Lindman</p>
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Dear Sir:

The following comments are presented in response to the Office Action mailed July 29, 2003. Favorable reconsideration is respectfully requested. Claim 4, 5 and 10-12 are pending.

Applicants respectfully traverse the rejection of claims 4 and 5 under 35 USC § 102(b) as anticipated by Saab, U.S. Patent No. 4,820,349. In order to anticipate, the cited reference must disclose each and every element of the claimed invention. Saab fails to do so.

Claim 4 requires the presence of a perfusion lumen having a proximal end that is proximate a proximal end of the balloon. This means that the proximal end of the perfusion lumen is positioned proximate (meaning close to or near by) the proximal end of the balloon. The Applicants definition of the term “proximate” is notoriously well-known in the art. Applicants respectfully submit that contrary to the comments in the office action, “proximate” is not equivalent to “proximally”. Thus, claim 4 requires the presence of a perfusion lumen that extends through the balloon but has a proximal end that is close to or near the proximal end of the balloon. By beginning the perfusion lumen just proximally of the balloon, blood just proximal of the balloon is able to enter the perfusion lumen and pass through the balloon. See for example page 5, lines 3-4 of the specification.

Figure 2 of Saab was referred to as disclosing such a lumen, but apparently the term “proximate” has been interpreted as “proximal”, as Saab does not describe, disclose or suggest the inclusion of any lumen, much less a perfusion lumen, that has a proximal end positioned near or close to the proximal end of the balloon. Thus, Saab fails to disclose a claimed element, and therefore Saab fails to anticipate the claimed invention.

Applicants respectfully submit that claim 4 is in condition for allowance and because dependent claim 5 includes additional elements, it is likewise in condition for allowance.

Applicants respectfully traverse the rejection of claim 10 under 35 USC § 102(b) as anticipated by Sahota, U.S. Patent No. 5,090,958. In order to anticipate, the cited reference must disclose each and every element of the claimed invention. Sahota fails to do so.

As previously discussed, claim 10 describes a balloon angioplasty catheter that includes a perfusion lumen extending through the balloon and a collapsible guidewire lumen that is disposed within the perfusion lumen. Sahota fails to disclose the claimed invention.

In particular, Sahota describes a dilation balloon catheter that has both a perfusion (bypass) lumen 68 and a lumen through which a guidewire lumen 66 can pass. The lumen through which the guidewire 66 passes appears to be positioned within the bypass lumen 68. However, Sahota does not describe or suggest a guidewire lumen that is collapsible.

Column 5, lines 25-28 of Sahota is cited as disclosing a collapsible guidewire lumen. Upon a reading of column 5, including lines 21-24, it becomes apparent that Sahota is referring to second wire 24, which has been advanced distally of a dilated segment of the blood vessel, preventing collapse of the blood vessel lumen, as described:

“The second wire 24 is left in place in the body lumen for a short period of time, referred to as the post-dilatation observation time, which is usually on the order to 15 minutes to ensure that the lumen will not collapse.” Sahota, column 5, lines 25-28.

Therefore, Sahota is discussing the possibility of a blood vessel lumen collapsing. A blood vessel lumen that is capable of collapsing is not equivalent to a guidewire lumen that is capable of collapsing. Thus, Sahota fails to describe a claimed element and therefore cannot be considered as anticipating the claimed invention. Favorable reconsideration is respectfully requested.

Applicants respectfully traverse the rejection of claims 11 and 12 under 35 USC § 103(a) as unpatentable over Sahota, U.S. Patent No. 5,090,958, in view of Saab, U.S. Patent No. 4,820,349. Sahota is distinguished above as failing to describe or suggest the invention of claim 10. Claims 11 and 12 depend from, and further limit, claim 10 and thus are similarly patentable over Sahota. Saab is relied upon to provide particulars of the claimed perfusion lumen, but as noted above Saab in fact fails to describe or suggest the claimed perfusion lumen and thus Saab fails to remedy the noted shortcomings of Sahota. Favorable reconsideration is respectfully requested.

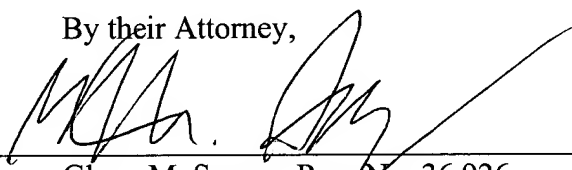
In view of the comments presented herein, favorable reconsideration in the form of a Notice of Allowance is respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

JAMES E. COX ET AL.

By their Attorney,

Date: Oct 29, 2003



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